

No. 11972

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

CURTIS COURANT,

Appellant,

vs.

INTERNATIONAL PHOTOGRAPHERS OF THE
MOTION PICTURE INDUSTRY LOCAL 659,
etc., et al.,

Appellees.

TRANSCRIPT OF RECORD

Upon Appeal From the District Court of the United States
for the Southern District of California
Central Division

FILED

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PAUL P. O'BRIEN, /

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

HENRY B. ELY

453 South Spring Street

Los Angeles 13, Calif.

For Appellees:

HENRY G. BODKIN

GEORGE M. BRESLIN

MICHAEL G. LUDDY

BODKIN, BRESLIN & LUDDY

1225 Citizens National Bank Building

Los Angeles 13, Calif. [1*]

In the District Court of the United States for the
Southern District of California
Central Division

Civil Action. File No. 8104 O'C

CURTIS COURANT,

Plaintiff,

vs.

INTERNATIONAL PHOTOGRAPHERS OF THE
MOTION PICTURE INDUSTRY LOCAL 659,
an unincorporated Labor Organization, HERBERT
ALLER, individually and as representative of the
members of said Local 659, DOE 1, DOE 2, DOE 3,
DOE 4, DOE 5, DOE 6, DOE 7, DOE 8, DOE 9,
DOE 10, DOE 11, DOE 12, DOE 13, DOE 14,
DOE 15, DOE 16, DOE 17, DOE 18, DOE 19,
DOE 20, DOE 21, DOE 22, DOE 23, DOE 24,
and DOE 25,

Defendants.

COMPLAINT

Amendment to Complaint ~~Amended:~~

1st date: 5-10-48

I.

Jurisdiction is founded on the existence of a Federal question and the amount in controversy, and on the existence of a question arising under the United States Constitution, Treaty and under particular Federal statutes.

The action arises under the Constitution of the United States, Article 1, Section 8, Article 6, the Fifth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States; the National Labor Relations Act, 29 U. S. C. A.

151-166, enacted July 5, 1935; Labor Management [2] Relations Act of 1947, 29 U. S. C. A. 141-197, enacted June 23, 1947; the Treaty between the United States and Poland of Friendship, Commerce and Consular Rights, 48 Stat. L. 1507; 28 U. S. C. A. 41 (1, 8, 12, 13, 14, 17, 23); 8 U. S. C. A. 41, 43, under color of Sections 921-923 Labor Code, State of California, and the laws of the State of California, 8 U. S. C. A. 47, 48; 15 U. S. C. A. 15; the matter exceeds, exclusive of interest and costs, the sum or value of \$3,000.00.

II.

The true names or capacities, whether individual, corporate, associate or otherwise, of defendants, Doe 1, Doe 2, Doe 3, Doe 4, Doe 5, Doe 6, Doe 7, Doe 8, Doe 9, Doe 10, Doe 11, Doe 12, Doe 13, Doe 14, Doe 15, Doe 16, Doe 17, Doe 18, Doe 19, Doe 20, Doe 21, Doe 22, Doe 23, Doe 24 and Doe 25, are unknown to plaintiff, who therefore sues said defendants by such fictitious names, and will ask leave to amend this complaint to show their true names and capacities when same have been ascertained.

III.

The International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, hereinafter referred to as IATSE, is a labor organization having as its purpose collective bargaining upon the negotiation of wages, hours and working conditions for its members; officers and agents of the IATSE are engaged in representing and acting for employee members within the above entitled district; IATSE has an office and place of business within said district; the members of the IATSE are members

in good standing of labor organizations having the same purposes and known as local unions and to which the IATSE has issued a charter; there are approximately 1,000 local unions chartered by the IATSE whose members are employed by at least 90% of all employers in the theatrical, television and motion picture industries of the United States; in connection with the motion picture [3] industry members of local unions of the IATSE employed by all employers engaged in the production of motion pictures within the State of California erect the stages for the production of motion pictures, do all work in connection with the filming of scenes of motion pictures, including all labor incidental thereto, as well as doing all make-up work for actors and actresses for motion pictures, and prepare, cut and develop the exposed film for preparation for shipment into intrastate, interstate and foreign commerce; such films are shipped to film exchanges throughout the State of California, the United States and foreign countries and, within the United States and Canada, members of local unions chartered by the IATSE work within said film exchanges; the members of said local unions chartered by the IATSE project the film upon screens in local theatres throughout the State of California, the United States and Canada; all employers engaged in the production of motion pictures within the State of California recognize IATSE as the exclusive bargaining agency for employees engaged in the production of motion pictures as hereinabove defined; the operations of the employers engaged in the production of motion pictures and the operations of the employees engaged in the production of motion pictures, as aforesaid, affect intrastate commerce within the State of California, interstate commerce with the several states of the United States, and foreign commerce; a labor dispute between the

IATSE and employers engaged in the production of motion pictures as aforesaid would completely shut down the production of motion pictures within the State of California and within the United States and would burden and obstruct intrastate, interstate and foreign commerce and the free flow thereof all employees engaged in the production of motion pictures as aforesaid, with the exception of first cameramen (also known as directors of photography) have designated the IATSE as their exclusive bargaining agency on wages, hours and working conditions the IATSE is not and never has [4] been established, maintained or dominated by any employer engaged in the production of motion pictures; ever since January 1, 1943, the IATSE under and by virtue of the National Labor Relations Act and under the color of Sections 921-923 of the Labor Code, State of California, and the laws thereof, has been a party to contracts with all employers engaged in the production of motion pictures, for the benefit of employees engaged in the production of motion pictures as aforesaid, including first cameramen; under said contracts employees engaged in the work as outlined above are required as a condition of employment to maintain membership in the IATSE and its local unions; ever since January 1, 1943, no person employed by any employer engaged in the production of motion pictures as aforesaid wherever manual work was involved has been employed without membership in the IATSE or a work permit from one of its chartered locals.

IV.

Pursuant to the direction of election of the National Labor Relations Board made August 28, 1939, and recorded in Official Records of the Board, 14 N. L. R. B. 224, the National Labor Relations Board did certify the

IATSE and its various local unions composed of members engaged in the production of motion pictures as aforesaid as the exclusive bargaining agency for all of said employees, with the exception of first cameramen; that the Official Record of said certification is found in 15 N. L. R. B. 225; said certification is still in force and effect; the IATSE represents some 10,000 employees engaged in the production of motion pictures within the State of California, County of Los Angeles.

V.

A first cameraman is a highly skilled person with many years of experience in all phases of motion picture camera work who is responsible for the artistic photographic effect of the action of the camera upon scenes taken for motion pictures, including the lighting thereof, the camera angles and the like, and is solely [5] responsible for the photographic results on the screen.

VI.

The American Society of Cinemaphotographers, hereinafter referred to as ASC, was from prior to 1941, and until the end of 1942, a labor organization composed of first cameramen for the purpose of collective bargaining on the part of all first cameramen upon wages, hours and working conditions of first cameramen with employers engaged in the production of motion pictures within the State of California; during said period the ASC represented a majority of first cameramen in said State and there was in force and effect contracts with all employers within said State requiring that as a condition of employment first cameramen be members of the ASC; the ASC was not established, maintained or dominated by any employer; no person could be employed by any em-

ployer engaged in the production of motion pictures within said State unless he were a member of ASC; on or about December 10, 1942, all members of the ASC designated the defendant, International Photographers of the Motion Picture Industry, Local 659, an unincorporated labor organization, hereinafter referred to as Local 659, as their collective bargaining agent to represent them on wages, hours and working conditions.

VII.

Local 659 is a labor organization having as one of its purposes the collective bargaining with employers upon negotiation of wages, hours and working conditions for its members; that officers and agents of Local 659 are engaged in representing and act for employee members within the above entitled district, and Local 659 maintains its principal office therein; on December 10, 1942, and all times thereafter Local 659 was a chartered local union of the IATSE; ever since December 10, 1942, Local 659 has been designated by a majority of first cameramen in said State of California as their exclusive bargaining agency on [6] wages, hours and working conditions and, ever since the said date, Local 659 has represented first cameramen in negotiations with all employers engaged in the production of motion pictures within said State as aforesaid; that Local 659 is not established, maintained or dominated by any employer; ever since December 10, 1942, there has been no controversy between any employer and Local 659 as to whether or not Local 659 was the exclusive bargaining agency for first cameramen on wages, hours and working conditions of first cameramen; at all times since that date Local 659 has acted as the exclusive bargaining agency on wages, hours and working conditions of first cameramen; pursuant to, by virtue of

and under the color of the authority granted to it by the National Labor Relations Act, Sections 921-923 of the Labor Code of the State of California, and the law of the State of California, Local 659, on or about January 1, 1943, entered into contracts with all employers engaged in the production of motion pictures as aforesaid within the State of California, requiring as a condition of employment that all first cameramen be and remain members in good standing of Local 659, a contract with such provision being commonly known as a closed shop contract; closed shop contracts for first cameramen between Local 659 and all employers engaged in the motion picture industry within said State have remained in full force and effect from on or about January 1, 1943, to and including the date of the filing of this complaint; the last agreement entered into by and between IATSE, Local 659, and all employers engaged in the production of motion pictures in said State was executed in writing as of January 1, 1946, for a term ending December 31, 1948, and provides that Local 659 shall represent all first cameramen for the purpose of collective bargaining and that employers engaged in the production of motion pictures will employ only first cameramen who are members in good standing of Local 659, and that Local 659 will furnish competent men to perform the work and render the services required by the [7] employer of first cameramen; a labor dispute between Local 659 and employers engaged in the production of motion pictures as aforesaid concerning first cameramen would completely shut down the production of motion pictures within the State of California and would burden and obstruct intrastate commerce, interstate commerce and foreign commerce and the free flow thereof.

VIII.

The State of California is the center within the United States of the production of motion pictures and the majority in the amount of exposed film and value of products in the production of motion pictures within the United States are produced within said State; the majority of employees engaged in the production of motion pictures as hereinabove set forth are employed for each individual picture produced or a lesser period; many first cameramen, members of Local 659 and beneficiaries under said closed shop contracts, are employed for each picture produced or for a lesser period.

IX.

Plaintiff was born on May 11, 1899, in Katowice, then under the sovereignty of the German Empire; during the year 1921, Katowice became under the sovereignty of Poland; plaintiff entered the United States with a United States immigration visa under Polish quota on or about the 28th day of May, 1941, at the Port of New York, all in accordance with Federal statutes as provided therefor; plaintiff did on or about the 10th day of July, 1941, file with the United States of America his declaration of intention to become a citizen of the United States; on the 11th day of July, 1947, plaintiff became a citizen of the United States of America and thereafter received his Certificate of Naturalization from the Clerk of the above entitled court; ever since the 1st day of July, 1941, plaintiff has intended to make his home within the State of California, and ever since said date has been a resident of the State of California, and intends to make his home in said State [8] permanently; beginning in 1920, plaintiff commenced his training and experience for first cameraman and learned all phases of the art or craft of

first cameraman; thereafter and until the outbreak of World War II, plaintiff acted as first cameraman in France, England, Italy, German, Austria and Hungary, and for the period up until he entered the United States was the first cameraman for in excess of 200 pictures produced in said countries; many of said pictures were shown and favorably received in local theaters in the United States, including "Quo Vadis," starring Emil Jannings, "Louise," starring Grace Moore, "The Human Beast," starring Jean Gabin, and "Broken Blossoms," starring Dolly Haas; upon entry into the United States in 1941, and ever since, plaintiff has had a high reputation within the United States and the State of California as a first cameraman; the said reputation of plaintiff was known among the employers, directors, actors and actresses of the motion picture industry within the State of California.

X.

For the period commencing with plaintiff's entry into the United States in 1941, to and including the end of December, 1942, plaintiff applied for membership in ASC and did all things requested in connection with filing his application with ASC; that ASC refused to admit plaintiff to membership in said union; as a result thereof plaintiff was unable to work as first cameraman during the period to the end of 1942.

XI.

Continuously ever since January, 1942, plaintiff has been filing his application for membership in the manner required by Local 659 on the forms supplied by Local 659, has deposited with Local 659 the sum of \$250.00, being one-half the initiation fee for membership in

Local 659 and has obtained the signatures of three members of Local 659, all as required by Local 659, and has done all things required by Local 659 of an applicant for membership; that [9] ever since January 1, 1942, Local 659 has refused to admit plaintiff to membership therein and, with the exceptions hereinafter noted, has refused to permit plaintiff to work as a first cameraman for any employer engaged in the production of motion pictures within the State of California.

XII.

Local 659 is composed of several hundred members and it is impractical to join all of said members as defendants in the above entitled action; defendant Herbert Aller is the Business Representative of all the members of Local 659 and acts for and on behalf of all members of Local 659, in connection with all their activities as described herein, and is sued herein individually and in his representative capacity of all members of Local 659; the members of Local 659 and Herbert Aller have entered into a conspiracy to deprive plaintiff of working as a first cameraman within the State of California, and have threatened great and irreparable damage to any employer who would employ plaintiff as a first cameraman within said State; that the acts constituting the conspiracy referred to are as set forth in this complaint.

XIII.

Ever since January 1, 1943, Local 659 has not admitted to membership any first cameraman although qualified persons have applied for membership and complied with all rules and regulations relating to applicants to membership in Local 659.

XIV.

Defendants and members of Local 659, ever since January 1, 1942, have conspired together by the means of the closed shop contracts above referred to and by means of refusing to admit any first cameraman to membership in said union, and by means of the other acts as set forth in this complaint, to monopolize for themselves all positions of first cameramen within the motion picture industry in the State of California; such acts are in violation of the [10] Constitution of California, Article I, and are an unlawful restraint on commerce and trade within the State of California and upon interstate and foreign commerce.

XV.

The defendants and the members of Local 659 have, ever since January 1, 1942, known that plaintiff was a qualified first cameraman, and that he entered the United States on a United States immigration visa, and that he filed his declaration of intention to become a citizen of the United States on or about July 10, 1941, and that since July 11, 1947, he was a citizen of the United States, and have known that plaintiff was dependent for his livelihood on work as a first cameraman and have known that plaintiff was suffering great humiliation and worry as a result of their continued refusal to permit plaintiff to membership in Local 659; defendants and members of Local 659, from January 1, 1942, and continuously up to the date of the filing of this complaint, have refused to admit plaintiff to membership in said Local 659; each time the application of plaintiff came before the membership for consideration, the only question discussed was whether plaintiff might obtain work as first cameraman, and the membership, believing that he would, therefore

denied his application; it is useless for plaintiff to file any further applications for or to do any other act required of applicants of Local 659.

XVI.

Ever since January 1, 1942, the Constitution of the IATSE, Article I, Section 3 thereof, has provided that "No person shall be eligible to membership in said Alliance who is not a citizen of the United States or Canada, or of any other territory in which the Alliance exercises jurisdiction;" the defendants and members of Local 659 consider said provision to be binding on each of them and have, ever since January 1, 1942, until July 11, 1947, as one of the grounds of refusal refused to admit plaintiff to membership in the [11] IATSE and Local 659 under and by virtue of said provision of their Constitution.

XVII.

The By-Laws of Local 659 and the members thereof for more than a year last past have provided that no first cameraman shall be admitted to said union.

XVIII.

Ever since January 1, 1942, defendants and members of Local 659 have refused to admit plaintiff as a member and in connection therewith have never advised plaintiff of any reason for denial of membership except that such membership was contrary to their Constitution or that employment as first cameraman was desired for the members of Local 659.

XIX.

Continuously, ever since plaintiff entered the United States, plaintiff has received offers of employment as first cameraman from employers engaged in the production of

motion pictures as aforesaid within the State of California on the condition that plaintiff for the period ending 1942, be a member of ASC, and thereafter on the condition that plaintiff be a member of Local 659; that plaintiff has been unable to accept said offers because he was not a member of said unions, with the exception that defendants permitted plaintiff to be employed by employers on three productions of motion pictures, one in 1945, entitled "Mad Wednesday," produced by California Pictures Corporation, another in 1946, entitled "Monsieur Verdoux," produced by Charlie Chaplin Studios, and another in 1947, entitled "Song of My Heart," produced by Allied Artists Corporation, under the terms and conditions as laid down by the defendants; said terms and conditions were as follows: Plaintiff could not look into the camera, nor touch the camera, nor give any order or direction to any of the camera crew, and plaintiff's employer was required to employ an extra union first cameraman; that plaintiff carefully [12] carried out all of these demands and conditions of defendants and plaintiff did have responsibility in connection with these three motion pictures produced in the State of California for the artistic effect on the screen, acting via the director of the motion picture through the extra union first cameraman, during 1946, Warner Bros. Pictures, Inc. offered employment to plaintiff on the motion picture "Possessed," starring Joan Crawford, under the same terms and conditions as laid down by defendants, but defendants refused to permit Warner Bros. Pictures, Inc. to so employ plaintiff; with the exception of the three employments referred to it has been and will be impossible for plaintiff to obtain similar employment under said terms and conditions as laid down by the defendants; that for said work on said three motion pictures as an employee

of the producers of motion pictures within the State of California plaintiff was paid approximately \$19,000.00 for a period of approximately eight months' work; plaintiff during the time of World War II was requested to act as first cameraman for a period of approximately five months for the War Department of the United States Government and was paid a sum of approximately \$800.00 therefor.

XX.

But for the action of the defendants as set forth in this complaint for the period beginning January 1, 1943, to the date of the filing of this complaint, plaintiff would have earned the sum of \$125,000.00, excluding therefrom the amounts plaintiff earned as hereinabove set forth, and the plaintiff has been damaged by the acts of the defendants and members of Local 659 in the amount of \$125,000.00.

XXI.

The defendants and members of Local 659 threaten to and will continue to prevent plaintiff from becoming a member of the union and will prevent him from following his occupation of first cameraman within the State of California for the remainder of [13] plaintiff's active life as a first cameraman, to the damage of plaintiff in the sum of \$250,000.00.

XXII.

That plaintiff has suffered great humiliation, worry, frustration and loss of prestige from the acts of the defendants complained of, to his damage in the sum of \$100,000.00.

XXIII.

The defendants for many years past and ever since January 1, 1942, have been warned that their refusal to admit persons to membership under the conditions outlined herein was in violation of law, but, nevertheless, the defendants have sought to deprive plaintiff of his rights under the Constitution of the United States, Treaties and Statutes of the United States for the selfish purpose of maintaining all the jobs of first cameraman for the members of Local 659, and that the aforesaid actions of the defendants are wanton, wilful and malicious and that exemplary damages should be imposed on defendants in the sum of \$500,000.00.

Wherefore, plaintiff prays for judgment against the defendants:

1. For loss of earnings in the sum of \$125,000.00, and that the same be trebled;
2. For loss of future employment in the sum of \$250,000.00, and that the same be trebled;
3. For general damages in the sum of \$100,000.00, and that the same be trebled;
4. For exemplary damages in the sum of \$500,000.00; and
5. For reasonable attorney's fees, costs of suit incurred and for such other relief as may be meet and just in the premises.

HENRY B. ELY

Attorney for Plaintiff

[Endorsed]: Filed Apr. 6, 1948. Edmund L. Smith,
Clerk. [14]

[Title of District Court and Cause]

MOTIONS BY DEFENDANTS INTERNATIONAL PHOTOGRAPHERS OF THE MOTION PICTURE INDUSTRY LOCAL 659, AN UNINCORPORATED LABOR ORGANIZATION, HEREINAFTER REFERRED TO AS DEFENDANT LOCAL, AND HERBERT ALLER, INDIVIDUALLY AND AS REPRESENTATIVE OF THE MEMBERS OF SAID LOCAL 659, HEREINAFTER REFERRED TO AS DEFENDANT ALLER, TO DISMISS

The Defendant Local and Defendant Aller, and Each of Them, Severally Move the Court as Follows:

(1) To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter for the reason that jurisdiction is not vested in this Court by the Constitution of the United States, Article 1, Section 8, Article 6, the Fifth Amendment to the Constitution of the United States, the Fourteenth [15] Amendment to the Constitution of the United States; the National Labor Relations Act, 29 U. S. C. A. 151-166, enacted July 5, 1935; Labor Management Relations Act of 1947, 29 U. S. C. A. 141-197, enacted June 23, 1947; the Treaty between the United States and Poland of Friendship, Commerce and Consular Rights, 48 Stat. L. 1507; 28 U. S. C. A. 41 (1, 8, 12, 13, 14, 17, 23); 8 U. S. C. A. 41, 43, under color of Sections 921-923 Labor Code, State of California, and the laws of the State of California, 8 U. S. C. A. 47, 48; 15 U. S. C. A. 15); nor by any provision of the Constitution of the United States; nor by any provision of the Statutes or Laws of the United States; nor by any provision of any treaty to which the United States is a party.

(2) To dismiss the action on the ground that the Court lacks jurisdiction because, as appears from the face of the Complaint, the diversity of citizenship necessary for jurisdiction does not exist.

(3) To dismiss the action as to the Defendant Local because the Complaint fails to state a claim against said defendant upon which relief can be granted.

(4) To dismiss the action as to Defendant Aller because the Complaint fails to state a claim against said defendant upon which relief can be granted.

(5) To dismiss the action because the Complaint fails to state a claim against the Defendant Local or Defendant Aller, jointly or severally, upon which relief can be granted.

This motion will be made upon the Complaint on file herein, the Notice of Motion and Points and Authorities in support thereof, and the Affidavit of Defendant Aller, hereto attached, by reference incorporated herein and made a part hereof. [16]

Dated: April 26, 1948.

BODKIN, BRESLIN & LUDDY
HENRY G. BODKIN
GEORGE M. BRESLIN
MICHAEL G. LUDDY

By Michael G. Luddy

453 South Spring Street
Los Angeles 13, California
Phone: MUtual 3151

Attorneys for Defendants International Photographers of the Motion Picture Industry Local 659, an Unincorporated Labor Organization, and Herbert Aller, Individually and as Representative of the Members of Said Local 659

NOTICE OF MOTION

To: Henry B. Ely, Esq.
453 South Spring Street
Los Angeles 13, California
Attorney for Plaintiff

Please Take Notice that the undersigned will bring the above motions on for hearing before this Court at the Court Room of the Honorable J. F. T. O'Connor, Court Room No. 7 of the United States Post Office and Court House Building, in the City of Los Angeles, County of Los Angeles, State of California, on Monday, the 10th day of May, 1948, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard.

Dated: April 26, 1948.

BODKIN, BRESLIN & LUDDY
HENRY G. BODKIN
GEORGE M. BRESLIN
MICHAEL G. LUDDY

By Michael G. Luddy

453 South Spring Street
Los Angeles 13, California
Phone: MUtual 3151

Attorneys for Above Named Defendants [17]

Received copy of the within Motions, etc., to Dismiss and Notice thereof this 26th day of April, 1948. Henry B. Ely, Attorney for Plaintiff.

[Endorsed]: Filed Apr. 26, 1948. Edmund L. Smith, Clerk. [18]

[Title of District Court and Cause]

MOTION BY DEFENDANT THE INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOTION PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA (SUED HEREIN AS DOE 1), HEREINAFTER REFERRED TO AS THE ALLIANCE, TO DISMISS

Defendant The Alliance Moves the Court as Follows:

(1) To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter for the reason that jurisdiction is not vested in this Court by the Constitution of the United States, Article 1, Section 8, Article 6, the Fifth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States; the National Labor Relations Act, 29 U. S. C. A. 151-166, enacted July 5, 1935; [19] Labor Management Relations Act of 1947, 29 U. S. C. A. 141-197, enacted June 23, 1947; the Treaty between the United States and Poland of Friendship, Commerce and Consular Rights, 48 Stat. L. 1507; 28 U. S. C. A. 41 (1, 8, 12, 13, 14, 17, 23); 8 U. S. C. A. 41, 43, under color of Sections 921-923 Labor Code, State of California, and the laws of the State of California, 8 U. S. C. A. 47, 48; 15 U. S. C. A. 15); nor by any provision of the Constitution of the United States; nor by any provision of the Statutes or Laws of the United States; nor by any provision of any treaty to which the United States is a party.

(2) To dismiss the action on the ground that the Court lacks jurisdiction because, as appears from the face of the Complaint, the diversity of citizenship necessary for jurisdiction does not exist.

(3) To dismiss the action because the Complaint fails to state a claim against said defendant upon which relief can be granted.

This motion will be made upon the Complaint on file herein, the Notice of Motion and Points and Authorities in support thereof, and the Affidavit of Roy M. Brewer, hereto attached, by reference incorporated herein and made a part hereof.

Dated: April 28, 1948.

BODKIN, BRESLIN & LUDDY
HENRY G. BODKIN
GEORGE M. BRESLIN
MICHAEL G. LUDDY

By Michael G. Luddy

453 South Spring Street
Los Angeles 13, California
Phone: MUtual 3151

Attorneys for Defendant The Alliance [20]

NOTICE OF MOTION

To: Henry B. Ely, Esq.
453 South Spring Street
Los Angeles 13, California
Attorney for Plaintiff

Please Take Notice that the undersigned will bring the above motion on for hearing before this Court at the Court Room of the Honorable J. F. T. O'Connor, Court Room No. 7 of the United States Post Office and Court House Building, in the City of Los Angeles, County of Los Angeles, State of California, on Monday, the 10th day of May, 1948, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard.

Dated: April 28, 1948.

BODKIN, BRESLIN & LUDDY
HENRY G. BODKIN
GEORGE M. BRESLIN
MICHAEL G. LUDDY

By Michael G. Luddy

453 South Spring Street
Los Angeles 13, California
Phone: MUtual 3151

Attorneys for Defendant The Alliance [21]

Received copy of the within Motion, etc., to Dismiss and Notice thereof this 28th day of April, 1948. Henry B. Ely, Attorney for Plaintiff.

[Endorsed]: Filed Apr. 28, 1948. Edmund L. Smith, Clerk. [22]

[Title of District Court and Cause]

AMENDMENT TO COMPLAINT

Plaintiff amends his complaint on file herein as follows:

I.

By adding to paragraph I of the complaint:

“the Preamble and Articles 1, 2, 55 and 56 of the United Nations Charter (59 Stat. L. 1046).”

II.

By adding to paragraph XVI, at the end thereof, the following:

“Such provision of the Constitution of the IATSE is unreasonable, arbitrary, capricious and without justification.”

III.

By adding to paragraph XVII, at the end thereof, the following: [23]

“That such provisions of the By-Laws of Local 659 are unreasonable, arbitrary, capricious and without justification.”

HENRY B. ELY

Attorney for Plaintiff

[Endorsed]: Filed May 10, 1948. Edmund L. Smith,
Clerk. [24]

[Title of District Court and Cause]

OPINION

Henry B. Ely, Los Angeles, California,
representing the plaintiff.

Bodkin, Breslin & Luddy, Los Angeles,
California, representing the defendants.

O'Connor, J. F. T., Judge.

This is an action by the plaintiff, Curtis Courant, against International Photographers of the Motion Picture Industry Local 659, an unincorporated labor organization, et al. The complaint was filed on April 6, 1948 and amendment filed May 10, 1948.

In his statement of the case, the plaintiff stated the
in his brief [O'Connor, Judge]
controversy \wedge as follows:

"Plaintiff as an alien with Declaration of Intention on file, and as a citizen, filed his complaint for damages in the above action on the ground that defendants both refused to permit him to work because of their closed shop agreement, and refused to admit him to membership in their unions." There seems to be a contradiction in the statement: plaintiff could not be both an alien with declaration on file, and a citizen. However, the allegation in the complaint is controlling, which states as follows: [25]

" . . . on the 11th day of July, 1947, plaintiff became a citizen of the United States of America and thereafter received his certificate of naturalization from the clerk of the above entitled court; ever since the first day of

July, 1941, plaintiff has intended to make his home within the State of California and ever since said date has been a resident of the State of California and intends to make his home in said state permanently”

The plaintiff alleges he complied with all of the rules and regulations of Local 659 in filing his application for membership, and deposited with Local 659 the sum of \$250.00, being one-half of the initiation fee for membership, and, further, obtained the signature of three members of Local 659, and has done all things required of an applicant for membership. Notwithstanding this compliance, he has been denied membership.

Plaintiff further alleges:

“Defendants and members of Local 659, ever since January 1, 1942, have conspired together by the means of the closed shop contracts above referred to and by means of refusing to admit any first cameraman to membership in said union, and by means of the other acts as set forth in this complaint, to monopolize for themselves all positions of first cameramen within the motion picture industry in the State of California; such acts are in violation of the Constitution of California, Article I, and are an unlawful restraint on commerce and trade within the State of California and upon interstate and foreign commerce.”

On April 26, 1948 the defendants filed a motion to dismiss the complaint on the following grounds—

“(1) To dismiss the action on the ground that the Court lacks jurisdiction over the subject matter for the

[26] reason that jurisdiction is not vested in this Court by the Constitution of the United States, Article 1, Section 8, Article 6, the Fifth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States; the National Labor Relations Act, 29 U. S. C. A. 151-166, enacted July 5, 1935; Labor Management Relations Act of 1947, 29 U. S. C. A. 141-197, enacted June 23, 1947; the Treaty between the United States and Poland of Friendship, Commerce and Consular Rights, 48 Stat. L. 1507; 28 U. S. C. A. 41 (1, 8, 12, 13, 14, 17, 23); 8 U. S. C. A. 41, 43, under color of Sections 921-923 Labor Code, State of California, and the laws of the State of California, 8 U. S. C. A. 47, 48; 15 U. S. C. A. 15); nor by any provision of the Constitution of the United States; nor by any provision of the Statutes or Laws of the United States; nor by any provision of any treaty to which the United States is a party.

“(2) To dismiss the action on the ground that the Court lacks jurisdiction because, as appears from the face of the Complaint, the diversity of citizenship necessary for jurisdiction does not exist.

“(3) To dismiss the action as to the Defendant Local because the Complaint fails to state a claim against said defendant upon which relief can be granted.

“(4) To dismiss the action as to Defendant Aller because the Complaint fails to state a claim against said defendant upon which relief can be granted.

“(5) To dismiss the action because the Complaint fails to state a claim against the Defendant Local or Defendant Aller, jointly or severally, upon which relief can be granted. [27]

“This motion will be made upon the Complaint on file herein, the Notice of Motion and Points and Authorities in support thereof, and the Affidavit of Defendant Aller, hereto attached, by reference incorporated herein and made a part hereof.”

A similar action was filed in this court and decided by Judge Ben Harrison:

Schatte, et al. v. International Alliance, etc., et al.,
70 Fed. Supp. 1008; Affirmed: 165 Fed. (2d)
216. (Petition for Writ of Certiorari denied by
the Supreme Court of the United States.) (8
U. S. Sup. Ct. Bulletin No. 23, p. 1327; 16 Law
Week 3316 and 3332.)

The motion of defendants to dismiss is granted.

Exception allowed the plaintiff.

Dated at Los Angeles, California, this 27th day of May,
1948.

J. F. T. O'CONNOR

United States District Judge

[Endorsed]: Filed May 27, 1948. Edmund L. Smith,
Clerk. [28]

In the District Court of the United States for the
Southern District of California
Central Division

No. 8104, O'C

CURTIS COURANT,

Plaintiff,

vs.

INTERNATIONAL PHOTOGRAPHERS OF THE
MOTION PICTURE INDUSTRY LOCAL 659,
an unincorporated Labor Organization, et al.,
Defendants.

JUDGMENT OF DISMISSAL FOR LACK OF JURISDICTION

The motions of the defendants International Photographers of the Motion Picture Industry Local 659, an unincorporated labor organization, The International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada, an unincorporated labor organization, and Herbert Aller, individually, and as representative of the members of said Local 659, for the dismissal of the above entitled action for lack of jurisdiction of this Court, having heretofore been submitted to this Court for determination, and it appearing that this Court lacks jurisdiction to proceed in said action: [29]

It is therefore ordered, adjudged and decreed that the above entitled action be and is hereby dismissed for lack of jurisdiction.

Dated: This 1st day of June, 1948.

J. F. T. O'CONNOR

Judge

Approved as to form. Henry B. Ely, Attorney for Plaintiff. Dated: This 27th day of May, 1948.

Judgment entered Jun. 1, 1948. Docketed Jun 1, 1948. Book C. O. B. 51, page 100. Edmund L. Smith, Clerk; By Francis E. Cross, Deputy.

[Endorsed]: Filed Jun. 1, 1948. Edmund L. Smith, Clerk. [30]

[Title of District Court and Cause]

NOTICE OF APPEAL TO CIRCUIT COURT OF
APPEALS UNDER RULE 73(b)

Notice Is Hereby Given that Curtis Courant, plaintiff above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the Final Judgment of Dismissal for Lack of Jurisdiction entered in this action on the 1st day of June, 1948.

Dated this 4th day of June, 1948.

HENRY B. ELY

Attorney for Plaintiff and Appellant,

CURTIS COURANT

[Endorsed]: Filed & mld. copy to Bodkin, Breslin & Luddy, Attys. for Defts. Jun. 3, 1948. Edmund L. Smith, Clerk. [31]

[Title of District Court and Cause]

STATEMENT OF POINTS OF PLAINTIFF AND
APPELLANT UNDER RULE 75(d)

The plaintiff and appellant will rely on the following points on appeal to sustain jurisdiction of the District Court:

1. The District Court has jurisdiction of the action under the National Labor Relations Act, 29 U. S. C. A. 151-166; Fifth Amendment to the Constitution, and Article 1, Section 8 and Article 6 thereof; the United States Treaty with Poland, 48 Stat. L. 1507; 28 U. S. C. A. 41 (1, 8, 12, 13, 14, 17, 23); 8 U. S. C. A. 47-48; 15 U. S. C. A. 15; United Nations Charter, the Preamble and Articles 1, 2, 55 and 56 thereof (59 Stat. L. 1046); 8 U. S. C. A. 41, 43, under color of Sections 921-923 Labor Code, State of California.

2. Appellant claims rights under the National Labor Relations Act, the Constitution, Treaties and Laws of the United States; the District Court has jurisdiction to determine whether or not appellant has any rights under such laws. [32]

3. The Congress under the National Labor Relations Act, has clothed appellees with monopolistic legislative powers and under the Act and the common law applicable thereto, appellees have violated their duty toward appellant, a Federal question.

4. Appellant is an employee as defined by the National Labor Relations Act; has been employed as First Camera-

man, has had offers of employment and appellees are estopped from claiming appellant not to be an employee; appellees have denied to appellant his rights as guaranteed under Section 7 of the National Labor Relations Act.

5. If, under Congressional authority, appellees have the right to prevent appellant from entering into a contract of hire, then questions of constitutionality of the National Labor Relations Act arise, a Federal question, and a conflict arises between the California Constitution and the National Labor Relations Act.

6. The portions of the Treaty with Poland relied on by appellant are self-executing, binding on the appellees as congressionally clothed agencies, and in their private capacities, and protect appellant in his accepting an offer of hire, a Federal question.

7. The monopoly of the appellees is forbidden by the Anti-Trust Laws, a Federal question.

Dated: June 4, 1948.

HENRY B. ELY

Attorney for Plaintiff and Appellant [33]

Received copy of the within this 4th day of June, 1948.
Michael G. Luddy, Attorney for Defendants.

[Endorsed]: Filed Jun. 4, 1948. Edmund L. Smith.
Clerk. [34]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 36, inclusive, contain full, true and correct copies of Complaint; Motions of Defendants International Photographers of the Motion Picture Industry Local 659 et al. and International Alliance of Theatrical Stage Employees and Motion Picture Machine Operators of the United States and Canada to Dismiss; Amendment to Complaint; Opinion; Judgment of Dismissal for Lack of Jurisdiction; Notice of Appeal; Statement of Points under Rule 75(d); and Stipulation as to Record under Rule 75(f) which constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$9.70 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 13 day of July, A. D. 1948.

(Seal)

EDMUND L. SMITH
Clerk

By Theodore Hocke
Chief Deputy

[Endorsed]: No. 11972. United States Circuit Court of Appeals for the Ninth Circuit. Curtis Courant, Appellant, vs. International Photographers of the Motion Picture Industry Local 659, etc., et al., Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed July 14, 1948.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for
the Ninth Circuit

